

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 28, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:04HD-341

Hawaii

Set Aside to State of Hawaii, Department of Transportation,
Airports Division for Runway Protection Zone Preservation,
Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41.

APPLICANT:

State of Hawaii, Department of Transportation, Airports Division

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Waiakea situated at Waiakea, South
Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-37:41, as shown
on the attached Exhibit A.

AREA:

124,002 square feet, or approximately 2.847 acres

ZONING:

State Land Use District: Urban
County of Hawaii CZO: MCX-20, Industrial-commercial mixed-use

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO XX_____

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Runway protection zone preservation.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

REQUIREMENTS:

- 1) DLNR shall be required to provide survey maps and descriptions according to State DAGS standards.
- 2) DOTA shall be required to pay DLNR a one-time consideration in the amount of TWO MILLION THREE HUNDRED FIFTY-SIX THOUSAND AND NO/100 DOLLARS (\$2,356,000.00), which an independent appraiser determined to be the fair market value of the Subject Parcel as of June 9, 2010.

BACKGROUND:

Due to unusual circumstances, the Department of Land and Natural Resources and the Department of Transportation, Airports Division ("DOTA") have agreed, with Federal Aviation Administration ("FAA") support, that this particular set-aside merits fair market value consideration. The circumstances are that DLNR had planned and taken action to develop the parcel for generating revenue to support the management of State lands. After much effort, DLNR was notified that the parcel could not be developed due to DOTA and FAA concerns. Now, with the support of DOTA and FAA, DLNR will receive compensation for the set-aside of the land and will use those funds to purchase a comparable property to generate income to support the management of State lands.

Accordingly, the DOTA and DLNR Land Division request the Board of Land and Natural Resources ("BLNR") approve and recommend to the Governor the issuance of an executive order setting aside to the DOTA 124,002 square feet, or approximately 2.847 acres, of commercial-industrial mixed-use zoned land situated in Waiakea, South Hilo, Hawaii, further identified by tax map key as TMK (3) 2-2-37:41 ("Subject Parcel"). A copy of the Subject Parcel tax map is attached as Exhibit A.

DLNR, as the manager of the public land trust, is responsible for managing approximately 1.3 million acres of State-owned lands and the State's natural resources. To support its duties and mission, DLNR seeks to utilize a portion of its lands for income generating purposes. Lease revenues from such lands are used to support DLNR's operations and its various public programs and functions. At its meeting on August 14, 2009, BLNR designated the Subject Parcel as a revenue generating property to fund the Department's Recreational Renaissance Plan B.

The Subject Parcel has excellent development potential due to its location along two major Hilo thoroughfares, Kanoelehua and Kekuanaoa Avenues. The property, however, remained vacant and underutilized for decades primarily due to its then RS-10 (residential) zoning designation. The value of the Subject Parcel and its revenue generating potential were improved substantially when DLNR obtained rezoning approval from the County of Hawaii to allow industrial and/or commercial uses.

During the rezoning application process, DOTA submitted agency review comments that the Subject Parcel is located within the Hilo International Airport's secondary runway protection zone.¹ As such, DOTA indicated it would seek to acquire the Subject Parcel, or, if DOTA were unable to acquire the property, DOTA would seek an avigation easement over the property. Due to the excellent revenue potential of the property, DLNR informed DOTA that it would not transfer the property to DOTA but would be willing to consider recommending that the Board grant an avigation easement.

The County of Hawaii approved DLNR's rezoning application in January 2004, and DOTA subsequently provided DLNR with the detailed requirements (e.g., height, noise disclosures) for the proposed avigation easement.

DLNR proceeded to prepare the requested avigation easement as well as prepare for a public auction of a ground lease for the Subject Parcel.

On October 8, 2004, under agenda Item D-1, the BLNR approved the sale of a 55-year ground lease over the subject parcel by public auction, subject to a proposed avigation easement being granted to DOTA. DOTA subsequently raised additional concerns, and the BLNR, at its meeting of February 25, 2005, Item D-5, approved additional lease terms to address DOTA's new concerns.

In a memorandum dated February 28, 2006, DOTA confirmed that development of the Subject Parcel would be acceptable if all improvements were kept within the height limits set by DOTA (which height limits were set forth in the avigation easement previously agreed upon).

Based on the foregoing, at its meeting of May 12, 2006, Item D-3, BLNR approved granting an avigation easement to DOTA and agreed to waive the fair market value compensation² normally required. DLNR then renewed its efforts to proceed with a public auction of

¹ The secondary runway is primarily used only when the main runway is closed down for some reason such as repairs.

² The fair market value of the avigation easement was valued at \$130,000. Appraisal dated March 2005 performed by Medusky & Co.

the Subject Parcel subject to the proposed aviation easement.

In June 2006, however, DOTA informed DLNR of an on-going FAA land use audit and requested that DLNR again refrain from proceeding with its auction until the FAA audit report was received. Although the timing for the report was projected to be a few months, DLNR agreed to wait until the end of the year.

With no response from DOTA regarding the FAA land use audit report, DLNR emailed DOTA on March 8, 2007, and confirmed a conversation to inform DOTA that DLNR would again proceed with its public auction of a lease covering the Subject Parcel.

In May 2007, DOTA notified DLNR that the FAA land use audit recommended that no development be allowed on the Subject Parcel.

As a result, DLNR continued to work with DOTA and FAA on a possible resolution agreeable to all parties.

In a correspondence from FAA to DOTA dated May 11, 2010 (Exhibit C) FAA has indicated that it can support a proposal in which DOTA would acquire the Subject Parcel from DLNR, provided certain conditions can be fulfilled, as follows:

1. The acquisition cost may be funded with airport revenue or State of Hawaii Special Funds.
2. The property must be properly identified in the Deed (metes and bounds) and the Airport Layout Plan and Exhibit A updated to show the parcel is airport property.
3. The acquisition price may be based on fair market value rates.
4. The acquired parcel will remain under airport's custody and authority in perpetuity as long as the airport exists.
5. There should be written agreement to document the monetary payment and the transfer of the land to [DOTA].
6. There should also be a signed commitment to use best efforts to obtain Governor's approval of an Executive Order memorializing the transaction and recognizing the land is in the custody of [DOTA].
7. This determination for the proposal to acquire subject parcel at [Kanoelehua] Avenue does not establish precedent for future land use issues, acquisitions, or releases. Each case must be evaluated on its own

merits and will be decided based on airport specific circumstances, federal law, and FAA policy.

Staff believes that it is in the State's interest to agree to the FAA conditions. Condition 1 relates to the source of DOTA's funding for the acquisition, which is essentially a matter between FAA and DOTA. However, there is an impact to DLNR relative to the funding source should the land be returned to DLNR in the future. In such an event, DLNR will need to pay DOTA fair market value at time of transfer based on appraisal to reacquire the land.

There will be no problem in complying with condition 2 because the executive order by which the land will be set aside to DOTA will contain a metes and bounds description of the land as well as survey map of the parcel. Staff has confirmed with FAA and DOTA that an executive order in lieu of the "Deed" referenced in the condition will be acceptable to FAA.

DLNR should receive fair market value for the land as contemplated by condition 3. In this regard, an independent appraisal of the Subject Parcel has established the fair market value at \$2,356,000 as of June 9, 2010. DOTA has agreed to pay DLNR this amount as part of the transaction.³

20% of the consideration to be paid for the Subject Parcel will be going to OHA, and 80% would be deposited "Special Land and Development Fund" (SLDF). The money will be set aside to acquire comparable land and revenues dedicated to support the management of public lands under DLNR jurisdiction.

The SLDF covers 100% of the payroll, fringes, operating and maintenance expenses for the Department's Land Division, the Office of Conservation and Coastal Lands, the Geothermal program staff, and most recently, the Dam Safety Program as mandated by the 2009 Legislature. The SLDF also covers the payroll and fringes of certain staff from the Commission on Water Resource Management, and has been relied upon by most Divisions and Offices within the Department to cover emergency response, hazard mitigation and budgetary shortfalls in program funding. Over the years, the importance of the SLDF to the Department has correspondingly increased, especially during declining economies and tight budgets. Due in part to numerous "special fund" raids, and most recently a decline in tenant revenues, the SLDF's

3 The appraised value does not reflect the avigation easement the BLNR previously approved to be placed on the land. The easement was approved at DOTA's specific request and should not affect the value DOTA is to pay DLNR for the land. Staff is not recommending the rescission of the prior Board actions mentioned above at this time. Should the proposed transaction not be consummated for any reason, or should the Subject Parcel be reacquired by DLNR in the future, staff believes that the BLNR's prior approvals would be desirable to have in place.

current revenue stream is now barely sufficient to cover the Land Division's basic payroll obligations, and ordinary operating expenses. As such, it is imperative that the Department be productive to maximize revenues in order to support the Department's programs and operations-for the sake and survival of the Department.⁴

Condition 4 presents no problem for DLNR as many if not most set-asides remain effective as long as the land is used for the specific purpose identified in the executive order. Condition 5 will be satisfied by the issuance of the executive order to DOTA as well as by a separate Memorandum of Agreement (MOA) to be executed by DOTA and BLNR prior to the issuance of the executive order that will memorialize the terms of the transaction as set forth herein. The signed commitment required under condition 6 to use best efforts to secure the executive order setting aside the Subject Parcel to DOTA can be included in the MOA.

Finally, condition 7 setting forth FAA's policy statement on the transaction can be included in both the MOA and executive order.

Staff is soliciting comments on the proposed disposition from the following agencies:

DLNR-Historic Preservation
DLNR-Engineering
Office of Hawaiian Affairs
County Planning Department
Federal Aviation Administration

Any responses received will be provided to the Board separately at the meeting.

Based on the foregoing, staff respectfully requests that the BLNR approve and recommend to the Governor the issuance of an executive order setting aside the Subject Parcel to DOTA. DOTA has advised staff that DOTA will need to obtain legislative approval to fund the purchase of the Subject Parcel. In the event that DOTA is unsuccessful in obtaining such approval during the 2011 Legislative Session, staff is including a recommendation below that Land Division be authorized to proceed with the auction of a lease of land for industrial-commercial purposes consistent with the Board's prior approvals.

Additionally, staff also recommends the BLNR delegate authority to the Chairperson to negotiate and enter into the MOA to

⁴ Although the Land Division generally serves as a land bank to provide public lands to other divisions, agencies and Departments for their programs and needs, the Subject Parcel is unique in that DLNR and the Board have expended considerable time, energy and money into making it a revenue-generating commercial/industrial property to meet DLNR's own needs.

memorialize the terms and conditions under of the agreement between BLNR and DOTA.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Transportation, Airports Division under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. The Subject Parcel shall remain under DOTA's control and management in perpetuity as long as the airport exists;
 - C. In the event that DOTA should no longer need the Subject Parcel and return it to DLNR in accordance with HRS Section 171-11, DLNR will pay DOTA fair market value at the time of transfer based on appraisal to reacquire the Subject Parcel;
 - D. The FAA's determination on DOTA's proposal to acquire the Subject Parcel does not establish precedent for future land use issues, acquisitions, or releases. The FAA advises that each case must be evaluated on its own merits and will be decided based on airport specific circumstances, federal law, and FAA policy;
 - E. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - F. Review and approval by the Department of the Attorney General; and
 - G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Delegate authority to the Chairperson to negotiate and execute a Memorandum of Agreement under the terms and conditions cited above, which are by this reference incorporated herein.

October 28, 2010

3. In the event that DOTA is unsuccessful in obtaining funding approval for the purchase of the Subject Parcel during the 2011 Legislative Session, Land Division is authorized to proceed with the auction of a lease of the land for industrial-commercial purposes consistent with the Board's prior approvals.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



a Laura H. Thielen, Chairperson

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Set Aside to State of Hawaii, Department of Transportation, Airports Division for Runway Protection Zone Preservation

Project Number: PSF No. 04HD-341

Project Location: Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41

Project Description: Set aside to Department of Transportation, Airports Division, of approximately 2.847 acres of industrial/commercial mixed use zoned land near Hilo International Airport for runway protection zone preservation.

Consulted Parties: County of Hawaii Planning Department; and others

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This action before the Board is merely a transfer of management jurisdiction and does not

EXHIBIT B

constitute an "action" that triggers the need for an environmental assessment.

A land use audit prepared by the Federal Aviation Administration (FAA) recommends that no development be allowed on the subject site, the Department of Transportation, Airports Division (DOTA), intends to preserve the entire site in its existing condition pursuant to said FAA land use audit recommendations. Accordingly, DOTA's use of the subject site is exempt from the provisions of Chapter 343, HRS, relating to environmental assessments, because the action involves negligible or no expansion or change of use beyond that previously existing.

Recommendation: The set-aside to DOTA will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use DOTA may make of the land that is consistent with the purpose of the set-aside, DOTA shall be responsible for compliance with Chapter 343, HRS, as amended.

Laura H. Thielen, Chairperson

Date

47275



U.S. Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports District Office

RECEIVED

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P. O. Box 50244
Honolulu, Hawaii 96850-0001
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DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

May 11, 2010

Mr. Brennon T. Morioka
Director
State of Hawaii
Department of Transportation
869 Punchbowl Street, Room 509
Honolulu, HI 96813-5097

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2010 MAY 18 A 10:35

RECEIVED
LAND DIVISION

Subject: Hawaii Land Use Audit and
Request for Airport Land Release

Dear Mr. Morioka:

As disclosed in our last letter dated December 22, 2009, we do not concur with the Hawaii Department of Land and Natural Resources' (DLNR) prior suggestion for a land exchange that proposed to trade a parcel at Kanoalehua Avenue for land at Ualena Street. Nevertheless, the FAA still seeks to establish compatible land use for the Runway 3 Runway Protection Zone at Hilo International Airport.

We have evaluated the proposal discussed at the January 11, 2010 meeting that would allow the Hawaii Department of Transportation to acquire the Kanoalehua Avenue parcel from the DLNR.

We determined the FAA can support this proposal as long as the following conditions can be fulfilled:

1. The acquisition cost may be funded with airport revenue or State of Hawaii Special Funds.
2. The property must be properly identified in the Deed (metes and bounds) and the Airport Layout Plan and Exhibit A updated to show the parcel is airport property.
3. The acquisition price may be based on fair market value rates.
4. The acquired parcel will remain under airport's custody and authority in perpetuity as long as the airport exists.
5. There should be a written agreement to document the monetary payment and the transfer of the land to Hawaii Department of Transportation Airports Division (HDOTA).

EXHIBIT C

6. There should also be a signed commitment to use best efforts to obtain Governor's approval of an Executive Order memorializing the transaction and recognizing the land is in the custody of HDOTA.

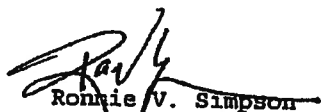
7. This determination for the proposal to acquire subject parcel at Kanoalehua Avenue does not establish precedent for future land use issues, acquisitions, or releases. Each case must be evaluated on its own merits and will be decided based on airport specific circumstances, federal law, and FAA policy.

We have also considered DLNR's request that the additional land release proposal for Kona International be separated from the resolution of the Land Use Audit. We are not at liberty to alter FAA compliance requirements. As we previously disclosed, FAA Order 5190.6b, Airport Compliance Manual requires that we evaluate the State's compliance record and willingness to resolve outstanding compliance issues. In view of the circumstances, the FAA cannot separate the land release request from the Land Use Audit issues that remain unresolved.

We remind the State, based on our letter dated December 22, 2009, that a formal corrective action plan is still needed to resolve non-conforming conditions and bring the State into compliance with the grant assurances. Consideration of a land release will have to remain in abeyance until satisfactory corrective action has been completed and all the Land Use Audit issues are satisfactorily resolved.

If you have any questions, please do not hesitate to call me at (808) 541-1232.

Sincerely,



Ronnie V. Simpson
Manager, Honolulu Airports District Office

cc: Ms. Laura Thielen, Chairperson, Hawaii DLNR
Brian Sekiguchi, HDOT Deputy Director - Airports